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Attorneys for Plaintiff,  
KATHRYN DURST,

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

KATHRYN DURST, an individual,

Plaintiff,

v.

Capital One Bank (USA) N.A.,

Defendant.

Case No. \_\_\_\_\_

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

Plaintiff, KATHRYN DURST ("Plaintiff"), through her attorneys, and  
hereby alleges the following against Defendant, CAPITAL ONE BANK (USA),  
N.A. ("Defendant"):

**INTRODUCTION**

1  
2 1. Plaintiff brings this action on behalf of herself individually seeking  
3 damages and any other available legal or equitable remedies resulting from the  
4 illegal actions of Defendant, in negligently, knowingly, and/or willfully  
5 contacting Plaintiff on Plaintiffs cellular telephone in violation of the Telephone  
6 Consumer Protection Act (hereinafter "TCPA"), 47 U.S.C. § 227 *et seq.*

**JURISDICTION AND VENUE**

7  
8 2. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and 47  
9 U.S.C. §227(b)(3). See, *Mims v. Arrow Financial Services, LLC*, 565 U.S. 368  
10 (2012), holding that federal and state courts have concurrent jurisdiction over  
11 private suits arising under the TCPA.

12 3. Venue is proper in the United States District Court for the District of  
13 Nevada pursuant to 28 U.S.C § 1391(b)(2) because Plaintiff resides within this  
14 District and a substantial part of the events or omissions giving rise to the herein  
15 claims occurred, or a substantial part of property that is the subject of the action  
16 is situated within this District.

**PARTIES**

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18 4. Plaintiff is a natural person residing in Lyon County, in the city of  
19 Silver Springs, Nevada.

20 5. Defendant is a nationally chartered bank doing business in the State of  
21 Nevada.

22 6. At all times relevant to this Complaint, Defendant has acted through  
23 its agents, employees, officers, members, directors, heir, successors, assigns,  
24 principals, trustees, sureties, subrogees, representatives and insurers.

**FACTUAL ALLEGATIONS**

25  
26 7. Defendant placed collection calls to Plaintiff seeking and attempting to  
27 collect on alleged debts incurred through purchases made on credit issued by

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1 Defendant under the commercial moniker of "Cabela's Club Visa credit card with  
2 Capital One."

3 8. Defendant placed collection calls to Plaintiffs cellular telephone at  
4 phone number (775) 217-94XX.

5 9. Defendant placed collection calls to Plaintiff from phone numbers  
6 including, but not limited to (877) 338-6191 and (800) 707-1374.

7 10. Per its prior business practices, Defendant's calls were placed with an  
8 automated telephone dialing system ("auto-dialer").

9 11. Defendant used an "automatic telephone dialing system", as defined  
10 by 47 U.S.C. § 227(a) (1) to place its telephone calls to Plaintiff seeking to collect a  
11 consumer debt allegedly owed by Plaintiff, KATHRYN DURST.

12 12. Defendant's calls did not constitute calls for emergency purposes as  
13 defined by 47 U.S.C. § 227(b)(1)(A).

14 13. Defendant's calls were placed to a telephone number assigned to a  
15 cellular telephone service for which Plaintiff incurs a charge for incoming calls  
16 pursuant to 47 U.S.C. § 227(b)(1).

17 14. Defendant never received Plaintiffs "prior express consent" to receive  
18 calls using an automatic telephone dialing system or an artificial or prerecorded  
19 voice on her cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

20 15. On or about December 20, 2017, the Plaintiff called into Defendant's  
21 company at phone number (877) 338-619, spoke with Defendant's representative  
22 and requested that Defendant cease calling Plaintiffs cellular phone.

23 16. During the conversation on December 20, 2017, Plaintiff gave  
24 Defendant both her phone number and social security number to assist Defendant in  
25 accessing her account before asking Defendant to stop calling her cell phone.

26 17. Plaintiff revoked any consent, explicit, implied, or otherwise, to call  
27 her cellular telephone and/or to receive Defendant's calls using an automatic

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1 telephone dialing system in her conversation with Defendant's representative  
2 December 20, 2017.

3 18. Despite Plaintiff's request to cease, Defendant placed another five (5)  
4 collection call to Plaintiff on December 20, 2017.

5 19. Defendant continued to place collection calls to Plaintiff through  
6 December 30, 2017.

7 20. Despite Plaintiffs request that Defendant cease placing automated  
8 collection calls, Defendant placed at least one hundred forty-nine (149) automated  
9 calls to Plaintiffs cell phone.

10 **FIRST CAUSE OF ACTION**

11 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**

12 **PROTECTION ACT**

13 **(47 U.S.C. § 227)**

14 21. Plaintiff repeats and incorporates by reference into this cause of  
15 action the allegations set forth above at Paragraphs 1-20.

16 22. The foregoing acts and omissions of Defendant constitute numerous  
17 and multiple negligent violations of the TCPA, including but not limited to each  
18 and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

19 23. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et  
20 seq., Plaintiff is entitled to an award of \$500.00 in statutory damages, for each  
21 and every violation, pursuant to 47 U.S.C. §227(b)(3)(B).

22 24. Plaintiff is also entitled to seek injunctive relief prohibiting such  
23 conduct in the future.

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**SECOND CAUSE OF ACTION**

**KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**

**CONSUMER**

**PROTECTION ACT (47 U.S.C. § 227 et. seq.)**

25. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-20.

26. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.

27. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff is entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

28. Plaintiff is also entitled to seek injunctive relief prohibiting such conduct in the future.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, KATHRYN DURST, respectfully requests judgment be entered against Defendant, CAPITAL ONE BANK (U.S.A.), N.A., for the following:

**FIRST CAUSE OF ACTION**

29. For statutory damages of \$500.00 multiplied by the number of negligent violations of the TCPA alleged herein (149); \$74,500.00;

30. Actual damages and compensatory damages according to proof at time of trial;

**SECOND CAUSE OF ACTION**

31. For statutory damages of \$1,500.00 multiplied by the number of knowing and/or willful violations of TCPA alleged herein (149); \$223,500.00;

1           32. Actual damages and compensatory damages according to proof at  
2 time of trial;

3                                   **ON ALL CAUSES OF ACTION**

4           33. Litigation costs and reasonable attorneys' fees;

5           34. Any other relief that this Honorable Court deems appropriate.

6  
7 Dated: June 6, 2018

Respectfully submitted,

8                                   **/s/ Mathew K. Higbee**  
9 Mathew K. Higbee, Esq.  
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*Counsel for Plaintiff.*

15                                   **/s/ Alyson Dykes**  
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*Counsel for Plaintiff.*

**DEMAND FOR JURY TRIAL**

Plaintiff, Kathryn Durst , hereby demands a trial by jury in the above captioned matter.

Dated: June 6, 2018

Respectfully submitted,

**/s/ Mathew K. Higbee**  
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**/s/ Alyson Dykes**  
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